formance. It is difficult, however, to see how this peculiarity can exempt such a transaction from the application of the broad equitable rule that one who has given good consideration for a contract becomes a purchaser for value of the right which he obtains upon a performance of the contract. On the analogy of a line of cases whose soundness has not been questioned, the appointee would seem to be in a position even stronger than that of the purchaser there protected. If the vendor on a contract for the sale of chattels becomes insolvent after receiving the purchase money, the purchaser is entitled to specific performance even though the chattels are not of peculiar value.[4] It would be inequitable to allow the general creditors to get the benefit both of the property and of the purchase money. The result of the principal case is to confer this unfair advantage upon the general creditors where the question is not whether the purchaser shall be granted an advantage which he would not otherwise possess, but whether he may keep a legal right which he has already obtained.

Since the only American case on the point is *contra*,[5] and since our courts have in other cases been reluctant to subject property appointed by will to the claims of creditors of the donee,[6] it seems improbable that this doctrine will be adopted in America.

EXECUTORY DEVISES CONDITIONED ON FAILURE TO ALIENATE A FEE SIMPLE. — The tendency of our law during many centuries has been to remove all restraints on the alienation of real property. From this it has resulted that not only have most restrictions imposed by the law been removed, but also the courts have become alert to discover and frown upon attempts by individuals to so restrain the enjoyment of property. Thus an executory devise of an estate conditioned on the failure of the holder to dispose of it during life is held void, since it is a restraint on alienation by will.[1] So also an executory devise conditioned on failure to dispose of the property by will is held void as a restraint on conveyance *inter vivos*.[2]

A recent Iowa case suggests another closely related class of executory devises, which the courts also hold void, namely, executory devises conditioned on failure to alienate either during life or by will. *Meyer* v. *Weiler*, 95 N. W. Rep. 254. Most of the modern cases holding such limitations void are rested purely on authority, and it is necessary to go to the older cases for reasons. No court has rested its decision on the express ground that they are restraints on alienation, no matter how much it may have been influenced by the other lines of cases. Such an objection is clearly untenable, since full power to alienate is given. It is said that such a limitation is repugnant to the gift of the fee and cannot stand because the right not to alienate, and so to allow the estate to go to the heirs, is a necessary incident of the fee.[3] Such an objection cannot even be supported technically, for from the very nature of an executory devise it takes away some incident of the preceding fee, and this incident does not seem to demand

---

[4] Parker *v.* Garrison, 61 Ill. 250.
[5] Patterson *v.* Lawrence, 83 Ga. 703.
[6] Wales Adm'r *v.* Bowdish Ex'r, 61 Vt. 23.

[1] Joslin *v.* Rhoades, 150 Mass. 301.
[2] Channell *v.* Aldinger, 96 N. W. Rep. 781 (Ia.).
[3] Shaw *v.* Ford, 7 Ch. D. 669.

different treatment than any other. Another reason advanced is that the executory devise is bad because conditioned on an event entirely within the control of the holder of the previous estate.[4] Exactly the same thing is true of many admittedly valid devises, for example a devise conditioned on the previous holder's remaining single. Again it is said that an executory devise cannot be limited to take effect at the very moment of the ending of the fee which it terminates. This also is not true. In fact most executory devises do vest at that time, as would happen for example where an estate is given to A in fee, and if he dies without issue living at his death, over to B.

That there is nothing fundamental in the objections to such limitations is evident from the fact that the courts are perfectly willing to allow the same result to be accomplished in another way, namely, by a gift to A for life with power to dispose of the property by deed or will, remainder over.[5] So it seems that this rule is founded on no substantial reason, but on the merest technicality, since it is possible to accomplish the same result by a change of phrase. It has nevertheless become generally established. It is an instance, unusual in modern law, of a rule, founded on no considerations of public policy, which overthrows the intention of the parties, when the language used is most appropriate to accomplish the desired result.[6]

NECESSITY OF NOTICE TO VOTERS. — It is a general rule of statutory construction that where the time and place of a meeting or election are set by statute, provisions as to the notice which must be given to voters are merely directory, the notice being in that case merely for further information. The right to vote comes from the statute, and should not be lost through the negligence of those officers whose duty it is to publish the notice.[1] But if either the time or the place of the meeting is not fixed by law, so that further notice is essential to enable the voter to act, these statutory provisions are usually regarded as mandatory.[2] So New England town meetings are held illegal if the provisions for notice have not been literally performed.[3] This doctrine has been carried so far that when the time of meeting has been inadvertently omitted from the notice recorded, it cannot be shown that it was in fact contained in the notices posted, nor is evidence that all the legal voters were present competent to render the acts of such a meeting legal.[4] The warrant containing the notice is regarded as the authority for the meeting, and must be strictly according to law.

It is evident that such a construction may frequently cause the will of the people to be defeated by the technical omission of some official. A recent New Jersey case shows to what extent a court will go to avoid this unfortunate result. The prosecutor was present and voted without protesting at the annual meeting of a street lighting district, for which the notice had not been posted for the statutory period of ten days. It was not shown that any

---

[4] Jackson *v.* Robins, 16 Johns. (N. Y.) 537.
[5] Stuart *v.* Walker, 12 Me. 145.
[6] See Gray, Res. on Alien. 48.

[1] People *v.* Cowles, 13 N. Y. 350; State *v.* Lansing, 46 Neb. 514.
[2] Cooley Const. Lim., 7th ed. p. 909.
[3] Commonwealth *v.* Smith, 132 Mass. 289.
[4] Sherwin *v.* Bugbee, 17 Vt. 337.